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Paper No. 5

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AUG 07 2002

OFFICE OF PETITIONS

In re Application of
Hania et al..
Application No. 10/045,651
Filed: November 7, 2001
Attorney Docket No. 501010-20522

DECISION ON PETITION

This is a decision on the petition filed May 30, 2002, requesting, in effect, that page 24 of the specification filed on May 30, 2002, be entered as part of the original disclosure.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The application was filed on November 7, 2001. On April 8, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of November 7, 2001, and advising applicants that page 24 of the specification appeared to have been omitted.

In response, the present petition was filed. Petitioner alleges page 24 of the specification was filed with the original application.

The petition cites the existence of a return postcard receipt stamped by the USPTO, but a copy of the postcard has not been submitted. Petitioner may wish to submit a copy of the postcard receipt.¹

The current evidence fails to prove that page 24 of the specification was filed on May 24, 2002.

While petitioner apparently believes that page 24 was filed on November 7, 2001, the file of application No. 10/045,651 indicates that page 24 was not received, since no such paper is present in the file. The file contains the actual papers received and the file is an official government record prepared and maintained by disinterested USPTO employees as a part of their

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

customary and usual duties. An applicant alleging that a paper was filed in the USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. In this regard, declarations by individuals involved in the preparation and filing of the original application reciting their personal recollection or belief of what was contained in the application that they reviewed are generally not more persuasive of what was actually filed in the USPTO than the contents of the application file. The declaration does not have more probative value than the official government record of what was actual received in the USPTO on November 7, 2001.

Petitioner requests that, if the petition is not granted, page 24 be deemed to have been deposited as of the filing date of the petition. Is petitioner requesting relief under 37 CFR 1.182 whereby the page will become part of the original application and the entire application will be given a filing date of May 30, 2002? If petitioner wishes to add the drawing without changing the application's filing date then such addition must be by way of an amendment or by filing a request for reconsideration with proof, such as a postcard receipt, that page 24 was submitted with the original application.

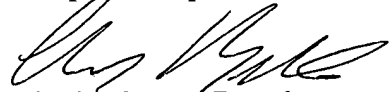
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
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